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U.S. DISTRICT COURT E.D.N.Y.
★ APR 28 2011 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JANET ASHBAUGH,

Plaintiff,

-against-

WINDSOR CAPITAL GROUP, INC.,
et al.,

Defendant.

-----X
GLASSER, United States District Judge:

The plaintiff filed a Notice of voluntary discontinuance of this action pursuant to Rule 41(a)(1)(A)(i), dated April 18, 2011. Docket #11. Relying upon the referenced Rule, the Court endorsed "So Ordered" on that Notice on April 21, 2011. Later that day, a letter from the defendant received in Chambers called the Court's attention to the fact that he was never served with the Notice of Dismissal notwithstanding the declaration under the penalty of perjury at the end of it that it was served via fax and regular mail upon defense counsel. That letter also called the Court's attention to the fact that the plaintiff's voluntary dismissal was not authorized without indicating why. Docket #12.

The Court then accessed the docket sheet and noted that an answer to the complaint was filed on November 5, 2010. Docket #2. A voluntary dismissal then plainly required a Court Order. Rule 41(a)(1)(A)(i); (2). The Court was thus misled by the plaintiff's Notice and his voluntary dismissal was erroneously "So Ordered."

A status conference was convened to address that issue. The plaintiff's attorney adamantly refused to acknowledge his misleading reference to the Rule and is hereby ordered to show cause at 4 p.m. on May 4th, 2011, why Fed. R. Civ. P. 11(b)(2) has not been violated. See Rule 11(c)(3).

MEMORANDUM AND ORDER
10 CV 4647 (ILG)

The Order dated April 21, 2011, authorizing the voluntary dismissal is hereby vacated and the viability of that action is hereby reinstated.

SO ORDERED.

Dated: Brooklyn, New York
April 27, 2011

S/ILG

1. Leo Glasser
